

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

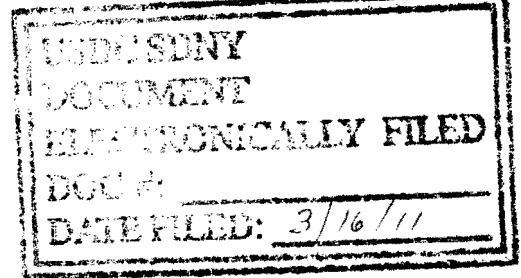
BOBBY JONES,

Plaintiff,

v.

M.M.O. MUSIC GROUP,

Defendant.



08 Civ. 7125 (RO)

ORDER

OWEN, District Judge:

Pro se Plaintiff brings this action against Defendant M.M.O. Music Group (“MMO”) for alleged discrimination on the basis of race, color, and age, in violation of Title VII, the Age Discrimination in Employment Act (“ADEA”), and the New York State Human Rights Law. For the reasons set forth below, this Court hereby adopts the Report and Recommendation of Magistrate Judge Lisa Margaret Smith in its entirety, granting Defendant’s motion for summary judgment and dismissing the action.

BACKGROUND

MMO is a corporation in the music publication industry. MMO originally hired Plaintiff in November, 2006 and terminated his employment in June, 2007.¹ Plaintiff filed a Verified Complaint with the New York Division of Human Rights, and after conducting an investigation, issued a Determination and Order stating that there was no probable cause to believe that MMO

¹ The facts giving rise to this action are provided in Judge Smith’s March 23, 2010 Report and Recommendation and will not be repeated here.

had engaged in unlawful discriminatory practices and that the evidence supporting Plaintiff's allegations that his race was a factor in his termination was insufficient to support a claim. The Equal Employment Opportunity Commission adopted those findings. Plaintiff filed this action on August 11, 2008.

On October 13, 2009, Defendant moved for summary judgment. (Docket Entry Nos. 17-21.) Plaintiff opposed Defendant's motion on December 3, 2009 (Docket Entry No. 23), and on December 8, 2009, Defendant filed a reply to Plaintiff's opposition. (Docket Entry No. 24.) On March 23, 2010, Magistrate Judge Lisa Margaret Smith issued a Report and Recommendation (the "Report"), in which she recommended that summary judgment be granted in favor of MMO and that the case be dismissed. (Docket Entry No. 27.)

On April 27, 2010, Plaintiff requested a sixty-day extension to file objections to the Report, which Judge Robinson granted. Plaintiff requested an additional ninety-day extension on June 23, 2010, which Judge Robinson also granted. On August 2, 2010, this case was transferred to this Court. (Docket Entry No. 31.) On September 14, 2010, Plaintiff requested an additional ninety-days to file objections to the Report. On October 12, 2010, this Court granted Plaintiff fourteen days to file objections. Plaintiff has not filed objections to the Report.

DISCUSSION

United States Magistrate Judges hear dispositive motions and make proposed findings of fact and recommendations, generally in the form of a Report and Recommendation. Absent objections by to the Report by a party, district courts review those orders under a clearly erroneous or contrary to law standard of review. 28 U.S.C. § 636(b)(1)(A).

Plaintiff's claim that he was discriminated against because of his age in violation of the ADEA fails for two reasons. Defendant, who had fewer than twenty employees during 2006 and

2007, is not an “employer” for the purposes of the ADEA and thus may not be subject to liability under the statute. Furthermore, Plaintiff has provided no allegations that he was discrimination based on age in his Amended Complaint, responses to interrogatories, or his opposition to Defendant’s summary judgment motion. Accordingly, Plaintiff’s age discrimination claims must be dismissed.

Plaintiff’s race discrimination claims under Title VII and the New York Human Rights Law must also be dismissed because Plaintiff has failed to make a prima facie showing of discrimination. Specifically, Plaintiff has failed to establish a critical element of a discrimination charge: that his employment was terminated under circumstances giving rise to an inference of discrimination. As the Report explains more fully, the record contains no evidence of disparate treatment – instead, Plaintiff’s allegations are conclusory and at times contradictory. Accordingly, these claims must be dismissed.

CONCLUSION

For the reasons set forth above, this Court hereby adopts, in its entirety, the Report and Recommendation of Magistrate Judge Lisa Margaret Smith. Defendant’s motion for summary judgment is GRANTED and this case is hereby DISMISSED.

SO ORDERED.

March 15, 2011


RICHARD OWEN
UNITED STATES DISTRICT JUDGE